

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In re Applications of )  
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)  
Martin W. Hoffman, Trustee-in- ) MM Docket No. 97-128  
Bankruptcy for Astroline )  
Communications Company Limited )  
Partnership )  
)  
For Renewal of License of )  
Station WHCT-TV, Hartford, CT ) File No. BRCT881202KF  
)  
and )  
)  
Shurberg Broadcasting of Hartford )  
)  
For Construction Permit for a New ) File No. BPCT-831202KF  
Television Station to Operate on )  
Channel 18, Hartford, CT )  
)  
To: The Commission

**COMMENTS IN SUPPORT OF**  
**MOTION FOR WAIVER AND APPLICATION FOR REVIEW**

Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership ("Trustee") and licensee of television station WHCT-TV, Channel 18, Hartford, Connecticut, by his attorneys, hereby supports the Motion for Waiver and Application for Review ("Application") filed by Richard P. Ramirez ("Ramirez" or "Petitioner") in the above-captioned proceeding on September 25, 1997.

The Application seeks a waiver of 47 C.F.R. § 1.301(b), which permits the appeal of interlocutory rulings at the discretion of the presiding judge, to allow consideration of this appeal of Judge John M. Frysiak's August 20, 1997 Memorandum Opinion and Order ("MO&O") in the above-referenced proceeding despite the ALJ's failure to grant leave.

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The MO&O denied Ramirez's Petition for Emergency Relief and Stay of Proceedings ("Emergency Petition"), which asked the Presiding Judge to stay this proceeding and to delete the misrepresentation issue designated against Astroline Communications Company Limited Partnership ("ACCLP") in the Memorandum Opinion and Order and Hearing Designation Order<sup>1</sup> because:

- (1) bankruptcy litigation in the U.S. Bankruptcy Court, District of Connecticut, resulted in the thorough consideration and rejection of the allegations that led to the HDO; and
- (2) the failure to grant relief to the Trustee under the Commission's Second Thursday doctrine cannot be squared with the Commission's decision in MobileMedia Corporation, FCC 97-197 (released June 6, 1997) ("MobileMedia").

The ALJ denied the requested relief both on procedural grounds and on the merits, holding that the bankruptcy litigation was not dispositive of the issues raised in the HDO, and stating that the facts and circumstances present in the instant case differ from those present in MobileMedia.

Petitioner has shown good cause to review the ALJ's ruling, and grant of the relief requested by the Petitioner is well within the Commission's authority, based on the compelling circumstances involved and the Commission's duty to give a "hard look" at the specific facts of individual cases. See MobileMedia, FCC 97-197; P&R Temmer v. FCC, 743 F.2d 918, 929 (D.C. Cir. 1984). As demonstrated below, neither the Mass Media Bureau nor the Presiding Judge has articulated any rationale for launching the full-scale inquiry set forth in the HDO, nor have they properly considered the extensive litigation and subsequent holdings in the federal courts concerning the issues raised in the HDO. Moreover, this

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<sup>1</sup> In re Applications of Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership For Renewal of License of Station WHCT-TV, Hartford, Connecticut, Memorandum Opinion and Order and Hearing Designation Order, FCC 97-146 (released April 28, 1997) (the "HDO").

proceeding involves questions as to the applicability of the Second Thursday doctrine which the MO&O fails to resolve.

The HDO commenced a broad inquiry into whether ACCLP misrepresented facts to the Commission based on allegations made by a competing applicant, Shurberg Broadcasting of Hartford ("Shurberg"). The very issue which forms the basis for Shurberg's claim that ACCLP made misrepresentations to the Commission --whether it was the limited partners or Petitioner who exercised actual control over WHCT-TV -- has been examined thoroughly in the Connecticut civil court proceeding and has been resolved in ACCLP's favor. The Bankruptcy Court's decision, including its factual findings, has been upheld on appeal to the Second Circuit.

The Mass Media Bureau has admitted that it is not "conversant with the bankruptcy trial record;" the ALJ, in the MO&O suggests that the Bankruptcy Court's decision is not dispositive as to whether Mr. Ramirez's ownership interests in ACCLP may have, at some point, dropped below the 20 percent threshold relevant to the Commission's minority ownership policy. It is, however, as Petitioner points out, illogical to suggest that if the Bankruptcy Court had found that Ramirez's ownership had dropped below 21%, the Court would not have mentioned that issue, particularly because the Court specifically found that Ramirez held 21% of ACCLP.

Because the allegations which form the basis for the HDO have been thoroughly adjudicated and rejected in the civil court system, deletion of the designated issue is the appropriate remedy. It is the Commission's practice to delete an issue where there is a "compelling showing of unusual circumstances, such as where the Commission overlooked, misconstrued, or failed to consider pertinent information relative to its determination to specify the issue for hearing. See, e.g., WOIC, Inc., 40 F.C.C. 2d 770 (Rev. Bd. 1973). Such is the case in the instant proceeding.

In addition, the MO&O's treatment of the Commission's recent MobileMedia decision also merits review. The MO&O did not apply or distinguish the recent Second Thursday precedent set forth in MobileMedia. Instead, the MO&O broadly stated that "the facts and circumstances for granting the relief [in MobileMedia] differ significantly from those considered in the instant proceeding." MO&O at ¶ 11. In fact, the circumstances which warranted relief in MobileMedia involved alleged misrepresentations far more egregious than those present in the instant case.

In the instant case, the Commission attributed its refusal to apply Second Thursday to the "severity of the misconduct alleged by Shurberg." HDO at 6. The ALJ, without expressly stating so, apparently agreed. That reasoning cannot lie, particularly in light of MobileMedia, however, given that the question of misconduct on the part of ACCLP at the heart of the HDO does not even remotely rival the seriousness of the conduct not merely alleged but proven in MobileMedia, particularly since allegations regarding misrepresentation on the part of ACCLP already have been thoroughly examined and rejected by federal courts. There can be no defensible basis, then, for denying to the Trustee the identical relief afforded to MobileMedia through stay of the license revocation proceeding.

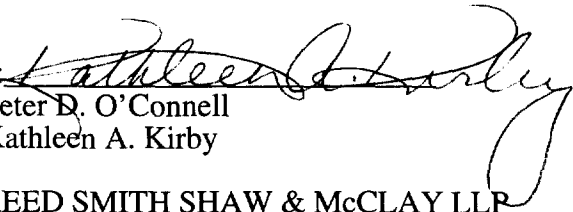
This proceeding, therefore, as Petitioner avers, involves "basic and far reaching considerations of public policy and vital concerns relating to the public interest" that will cause irreparable harm if not addressed by the Commission. Application at 2, citing Communications Satellite Corp., 32 F.C.C.2d 533, 535 (1971). First, because the Presiding Judge has failed to give proper weight to the Bankruptcy Court's resolution of the issue of Ramirez's ownership interest in and control of ACCLP, by denying the Emergency Petition the MO&O contravenes the public's interest in the finality of judgments and violates the principle of full faith and credit. To launch a new evidentiary inquiry, as called for in the HDO, namely, a duplicative investigation into whether ACCLP misrepresented its status as a minority-controlled entity, would manifestly squander public resources, undermine the full

faith and credit which must be accorded the courts, and run counter to administrative and judicial efficiencies. Moreover, the decision not to apply the Second Thursday doctrine to provide Trustee with relief simply cannot be squared with the Commission's recent decision in MobileMedia.

For the reasons set forth above, therefore, the Trustee respectfully requests that the Commission reverse the MO&O and grant the relief requested in the Emergency Petition to (a) stay this proceeding; and (b) delete the misrepresentation issue in light of the decisions reached by the federal courts and the Second Circuit Court of Appeals or, alternatively, certify this proceeding for reconsideration of the applicability of the Second Thursday doctrine.

Respectfully submitted,

MARTIN W. HOFFMAN, Trustee-in-Bankruptcy  
for Astroline Communications Company Limited  
Partnership

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October 6, 1997

CERTIFICATE OF SERVICE

I, Lynne M. Rutter, a secretary in the law firm of Reed Smith Shaw & McClay, do hereby certify that true copies of the foregoing "Comments in Support of Motion for Waiver and Application for Review" was sent this 6th day of October, 1997, by first class United States mail, postage prepaid, to the following:

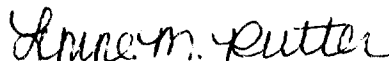
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